IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 42 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
ASHOKKUMAR CHHOTALAL VASANI - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
MR YN RAVANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 09.10.1996 passed by the learned Judicial Magistrate, First Class, Junagadh in Criminal Case No. 672 of 1994 whereby, the respondent – accused was acquitted of the charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 25.08.1993, at around 1830 hrs., an inspection was carried out at the shop of the respondent – accused by the Officers of the appellant – State. After completing necessary formalities, a sample of Black Pepper was collected from the respondent in the presence of '*panchas',* after making necessary payment towards the same. One of the said samples was then sent to the Analyst for examination.

2.2 On examination, the said sample was found to be adulterated. Therefore, a complaint with respect to the aforesaid alleged offence was filed against the respondent and, ultimately, trial was conducted. In order to prove the guilt against the respondent, the prosecution has examined the complainant – Parbatbhai Kanabhai Vadaliya as PW – 1 at Exhibit – 29, Yashwant Ramjibhai Rathod as PW – 2 at Exhibit – 49 and Jayantilal Tribhovandas as PW – 3 at Exhibit – 50 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondent of the charges levelled against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been

very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".

[*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 After considering the entire oral as well as documentary evidence on record, the trial Court has arrived at the conclusion that the prosecution has failed to prove that the sample of Black Pepper so collected was collected after following due procedure of law. The said conclusion has been arrived at on the basis that the container in which the said sample of Black Pepper was collected was not cleaned before doing so which is mandatory under the provisions of the Prevention of Food Adulteration Act, 1954.

7.0 The only irregularity which appears to be there is the existence of mineral oil in the said sample. However, the Report of the Public Analyst does not state that the said sample of Black Pepper was harmful or injurious to health on consumption. Considering the facts of the case, it would be fruitful to refer to a decision of this Court in the case of ***Iqbal Musubhai Hunani v. State of Gujarat & anr.*** reported in ***1993 (1) G.L.H. 417*** wherein

on the facts of the case the Court held the conviction for food adulteration as unjustified and, accordingly, set aside the same.

8.0 Thus, keeping in mind the principle laid down in *Iqbal Musubhai Hunani's* case (supra), I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this

Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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